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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 000269

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SUBJECT: CHALABI VIEWS ON THE PITFALLS OF DE-BA'ATH

Classified By: Charge d'Affaires, a.i. Patricia A. Butenis for reasons
1.4 (b) and (d).

¶1. (C) Summary: In a meeting with PolCouns on January 24, Dr. Ahmed Chalabi, the current Commissioner of the Higher National De-Ba'athification Committee and the Chair of the PM's Essential Services Committee, shared his views on the passage of the Law of Accountability and Justice. While noting some positive aspects of the new law, he cautioned against its increased scope and its potential to undo what he defended as positive reconciliation work that the HNDBC accomplished under his leadership. Post continues to believe that meaningful implementation of the law, which did not codify necessary procedures, will rely heavily on the actions the GoI takes before the law is put into effect. While Chalabi's views can be seen as self-serving, he draws on a strong base of knowledge of the de-Ba'athification process. He also believes the ultimate impact of the law will depend heavily on how the government and the new commission implement the law. We will seek opportunities to engage the PM and other senior officials to highlight the need for proactive GOI efforts in shaping positive implementation of the law. End Summary.

Chalabi's views on Accountability and Justice

¶2. (C) Dr. Chalabi noted that the Law of Accountability and Justice (LAJ) was positive in two aspects. First, he stated that the change of name from the Higher National De-Ba'athification Commission (HNDBC) to the Higher National Commission of Accountability and Justice (HNCAJ) was beneficial to all parties. Second, he was enthusiastic about the clause that gives pensions to those members of the Shu'aba level, although he was quick to point out the HNDBC tried to give pensions as often as they were able to those who already applied for them.

¶3. (C) "Every other aspect of the law," Dr. Chalabi commented, "is harsher to the Ba'athists." He quoted the clause that expands the scope of the commission to "purge organizations of the government sector, mixed sector, civil society, and Iraqi society of the Ba'ath party system in any form." (Article 3, second part) He noted the law provides that rulings of the HNDBC remain valid if they do not contradict the new law, which was particularly worrisome (Article 20) with regard to the continuing validity of previously granted exemptions. He cautioned that there was significant potential for the new commission to begin a game of "political football" by overturning previous decisions to further political aims.

¶4. (C) As cause for his concern, he pointed to the 7000 employees of the Ministry of Interior who in his view will face loss of their jobs due to their former membership in the Ba'ath party (Article 6, sixth part). He also was critical of the clause that rids Ba'athists of the rank firqa from positions of Director General or higher (Article 6, second

part). For example, the HNDBC had previously issued numerous exemptions (including eight of the top eleven current Iraqi generals) to key officials of the rank firqa. He said it was possible that those exemptions will be terminated once the law goes into effect. In response to questioning about the validity of this point of view, Chalabi opined that the new chairperson had discretion to allow former exemptions to stand, without consultation from another body such as the Council of Ministers, but was not bound to do so. (Comment: According to Post's interpretation of the law, the Council of Ministers, through coordination with the HNCAJ, could step in and allow the individuals to return to their jobs with approval of the CoR (Article 12). Otherwise, an appropriate entity, including the individual, his ministry, or the provincial council, would have to contest the termination within 30 days (Article 15). End Comment.)

15. (C) On the topic of the ratification of the LAJ, Chalabi said that it would be a huge mistake for VP Hashimi to veto the law; if returned to the CoR, the law might never emerge again. He commented that it had been extremely difficult to get the UIA to consider the law at all. He characterized Sistani and his aides as "violently against it," and singled out Sistani spokesman al-Najafi as particularly strong in his opposition. Noting that only 111 representatives voted in favor, he reiterated that it would be unwise for the Presidency Council not to sign the law.

16. (C) Chalabi agreed that how the LAJ is implemented is critical. Due to the vague outline of procedures within the law, its implementation is heavily dependent on who becomes chairman of the HNCAJ. He commented that the CoR would appoint the chairman, and stressed the need for someone with the right intentions who was strong and balanced to lead the

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commission. Post's interpretation of the LAJ is that the Council of Ministers appoints seven commissioners, who are confirmed by a simple majority of the CoR. The commissioners then elect a chairman from among themselves, who is confirmed by an absolute majority of the CoR (Article 2, fourth and sixth parts).

17. (C) When asked how many former Ba'athists the LAJ and the Unified Pension law would affect, Chalabi doubted that many additional members at the rank of firqa would apply for pension benefits, since they already had that opportunity under the HNDBC. He estimated that about half (about 2000) of those at the shu'aba level would apply for pensions; the rest would not because, to do so, they must face the associated difficulties of returning to Iraq.

Comment: The time crunch in the implementation

18. (C) Post assesses that much of the positive gain for reconciliation represented by passage of the LAJ will be lost if the GoI allows the law to be published without considering a number of implementation issues and alleviating them by issuing implementing regulations and ensuring the appointment to the commission of well-regarded, non-partisan figures. If the GoI does not exercise appropriate leadership, the chairperson of the HNCAJ will have significant discretion in establishing bylaws and implementing regulations.

19. (C) However, there is a timeline written into the law that goes into effect upon its publication in the official gazette. Naming a chairperson for the HNCAJ will require the appointment of the seven commissioners and the subsequent confirmation and approval of one of them as chair by an absolute majority of the CoR. This chairperson has 30 days from the LAJ's publication (not his appointment) to issue bylaws to regulate its activities (Article 27). It is not clear what will occur if either the CoR is unable to confirm a chairman before that 30-day window lapses, or if the

chairman does not issue these bylaws.

¶10. (C) The law does not clearly spell out the process for a former Ba'athist to apply for either a pension or reinstatement into employment, something they must do within the first 60 (or 90, if out of the country) days from the date of publication in the official gazette (Article 7). Likewise, the law does not clearly spell out what will happen to those individuals who receive de-Ba'athification orders after the 90-day window. Also, since there is a 30-day deadline to file an appeal, it is not clear what will happen to those who received de-Ba'athification orders prior to the enactment of the law. The as yet unwritten implementing regulations are therefore of great importance to the prospects of the law facilitating the reinstatement of former Ba'athists.
BUTENIS